

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL ACTION NO. 09-3177 (FSH)

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CARANT LIMITED PARTNERSHIP, et al., :
:
Plaintiffs, : TRANSCRIPT
-vs- : OF
:
STATE OF NEW JERSEY, et al., : PROCEEDINGS
:
Defendants. :
- - - - - x

March 9, 2010
Newark, New Jersey

B E F O R E: HONORABLE FAITH S. HOCHBERG, U.S.D.J.

A P P E A R A N C E S:

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&
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Pursuant to Section 753 Title 28 United States Code, the
following transcript is certified to be an accurate record
stenographically in the above entitled proceedings.

s/ John K. Stone

JOHN KEVIN STONE,
Official Court Reporter

1 * * *

2 THE COURT: The parties have negotiated and reached
3 a settlement of Civil Action Number 09-3177, and I am going
4 to allow plaintiffs counsel to put on the record what he
5 believes the settlement is.

6 I will then ask counsel for the State of New Jersey
7 whether they agree that it fairly and accurately states the
8 settlement that's been reached, and then I will ask the
9 individual clients whether they concur in the settlement.

10 So you can go go ahead and state what it is.

11 MR. MC KIRDY: Thank you, Your Honor.

12 My understanding of the settlement that was reached
13 with reference to the matter presently before the Court is
14 as follows:

15 (1) The state agrees to and will waive all
16 provisions relating to what we've designated the forced
17 offer requirement, as it appears in Section G, excuse me, of
18 the relevant regulation.

19 (2) The plaintiff will consent to dismissal of its
20 present complaint without prejudice.

21 (3) The parties agree that any statute of
22 limitations will commence to run at the conclusion of the
23 waiver application process.

24 THE COURT: Before the DEP.

25 MR. MC KIRDY: Before the DEP, which -- yes, Your

1 Honor.

2 THE COURT: All right.

3 Does counsel for the State of New Jersey concur
4 that that is a fair and accurate thumbnail of the
5 settlement?

6 MS. CONKLIN: Yes.

7 And the reference is N.J.A.C. 7:38-6.8, Subsection
8 G, that is the section, that which we will be waiving with
9 respect to the property in the complaint.

10 THE COURT: So the provision of N.J.A.C. --

11 MS. CONKLIN: A.C.

12 THE COURT: -- 7:38-6.8 G, to the extent it
13 requires the plaintiffs to put the property -- offer the
14 property for sale before being permitted to seek a waiver
15 based on hardship from the DEP will not be enforced as
16 between these parties.

17 MS. CONKLIN: Correct.

18 And it is only between these parties.

19 THE COURT: Right.

20 And this governs, this settlement governs these
21 parties. Does everyone agree that that's the correct
22 statutory section?

23 MR. DE ANGELIS: That I was going to ask that.

24 THE COURT: Yes, me too.

25 MS. CONKLIN: That's correct.

1 THE COURT: Yes.

2 MR. MC KIRDY: Agree.

3 THE COURT: I'm going to have my intrepid law clerk
4 check and be sure that's the right section.

5 THE LAW CLERK: 7:38-6.8 G. Yes.

6 THE COURT: Okay.

7 I think it's a smart thing to do. We've had some
8 discussions off the record. I think it would behoove you to
9 to follow-up, just to figure out the best way to create
10 greater clarity going forward for others in the discretion
11 of the commissioners, obviously.

12 I think you understand well the metes and bounds of
13 regulation versus inverse condemnation and that wise heads
14 will prevail.

15 And if there -- the only provision that I'm stating
16 on the record is one I told the parties, which is that if
17 they're -- at the conclusion of the hardship waiver process
18 at the state administrative level, if the plaintiffs are
19 still unsatisfied and wish to seek further relief or claim
20 that there is a taking, they will follow the procedure to
21 take that ruling up through the state courts of New Jersey.

22 Anything further?

23 MR. MC KIRDY: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 MR. MC KIRDY: Let me thank you for your courtesy

1 throughout.

2 THE COURT: My pleasure.

3 MS. CONKLIN: Thank you for your patience.

4 THE COURT: That's what I'm here for.

5 MR. DE ANGELIS: Thank you, Your Honor.

6 THE COURT: Really, thanks for sound heads
7 prevailing. It makes a lot more sense to go this way than
8 to spend a ton more money on both sides continuing federal
9 litigation, which is time consuming, expensive, and
10 everybody has better things to do.

11 I'll see you hopefully only on the next case.?

12 MR. MC KIRDY: Thank you.

13 THE COURT: Thank you. We'll enter a 30 day order.
14 I'll expect you both to file -- we're entering a 30 day
15 order dismissing the case as settled.

16 The action will, if you want to just take what the
17 court reporter has taken down now and convert it into a one
18 page order. If you'd prefer not to, we can simply say the
19 case has been settled. You know what, I think for this case
20 it's better for me to just say the case is dismissed as
21 settled pursuant to the terms set forth on the record and
22 retained by Judge Hochberg in her chambers.

23 MR. MC KIRDY: Okay.

24 MS. CONKLIN: Are you okay with that? I am as
25 well.

1 MR. MC KIRDY: That's satisfactory.

2 THE COURT: Okay. Will do.

3 Thank you.

4 MR. MC KIRDY: Thank you Your Honor.

5 MS. CONKLIN: Okay. Thank you.

6 MR. DE ANGELIS: Thank you, Your Honor.

7 THE COURT: Okay.

8 So we don't need to enter a 30 day, it is dismissed
9 as of this point in accordance with the terms set forth on
10 the record.

11 (Court adjourned).

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